THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.26657 of 2005

Date ; 14-9-2006

Between:

Mohd.Ismail @ Mangalgari Ismail
and another .. Petitioners

and

Municipal Corporation of Hyderabad
Represented by its Commissioner,
Tank Bund, Hyderabad. .. Respondent

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.26657 of 2005

ORDER:

1. Heard the Counsel.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of respondent in not paying compensation to the petitioners for the extent of 66.3 sq. yards of their land and structures which existed thereon and demolished by the respondent forming part of No.8-3-1, 8-3-2, 8-3-3, 8-3-367/1, 8-3-367/2 and 8-3-368, St. Mary's Road, 2nd Bazar, Secunderabad except an extent of 10'8" x 7'8" in 8-3-367/1 taken for road widening in accordance with the provisions of the Land Acquisition Act, 1894 as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India and consequently to direct the respondent to forthwith pay the same to the petitioners and to pass such other suitable orders.

3. The grievance of the petitioners is that there is total inaction on the part of the respondent in relation to the payment of compensation to the petitioners in accordance with the provisions of the Land Acquisition Act, 1894 for 66.3 sq. yards of their land which was taken for road widening after demolishing the existing structures forming part of petitioners property bearing Municipal No.8-3-1, 8-3-2, 8-3-3, 8-3-367/1, 8-3-367/2 and 8-3-368, St. Mary's Road, 2nd Bazar, Secunderabad. It is also stated that originally the properties belonged to the family of the petitioners. These properties fell to the share of the petitioners 1 and 2 in a compromise dated 7-9-2004 recorded by the Hon'ble High Court in C.C.C.A.No.88/2001. As per the said compromise

an extent of 57 sq. yards consisting of H.No.8-3-1, 8-3-2 and 8-3-368 fell to the share of the 1st petitioner and 90.88 sq. yards comprising of H.No.8-3-3, 8-3-367/1 and 367/2 fell to the share of the 2nd petitioner. The said portions had been in the possession and enjoyment of the petitioners prior to the compromise and subsequently also. It was further stated that when respondent threatened to demolish the properties bearing Nos.8-3-3, 8-3-367/1 and 8-3-367/2 belonging to the 2nd petitioner by attempting to compel the 2nd petitioner to sign a consent letter, the 2nd petitioner filed W.P.No.2915/2003 in the High Court of A.P. On 18-2-2003 the Hon'ble High Court directed the respondent not to demolish the above premises without following the due process of law or on private negotiations if the petitioners gave consent. In case the 2nd petitioner did not give consent the Hon'ble High Court held that it was open to the respondent to acquire the same under the provisions of the Land Acquisition Act. It was further stated that subsequent thereto on 15-3-2003 a notice in reference No.1/RW/SMR/C-22/SD/2003 was served on the 1st petitioner informing him that an extent of 122 sq. yards of his land would be affected by road widening and directed him to give consent. The petitioners and other residents of the area filed W.P.No.6577/2003 in the High Court of A.P. challenging the same. On 21-4-2003 the said Writ Petition was disposed of directing the respondent to maintain status quo and certain directions were given by the Court in case land is sought to be taken for road widening. However the structures existing on the land were not demolished by the respondent by then and that status continued till August, 2005. The petitioners also further submitted in the affidavit filed in support of the Writ Petition that on 24-9-2004 a notification under Section 4(1) of the Land Acquisition Act was issued which was published in Deccan Chronicle News Paper on 30-9-2004 proposing to acquire 129.20 sq. yards in premises No. 8-3-1 and 8-3-367 in Block 'C', Ward No.7, Bholakpur village, Secunderabad Mandal belonging to the 1st petitioner. On the same day, declaration

under Section 6 of the said Act was also published in the same news paper and notice under Section 9(3) of the Land Acquisition Act as issued to the petitioners on 6-10-2004 fixing 25-10-2004 as the date of enquiry and subsequently it was adjourned to 19-3-2005. The petitioners appeared through a Counsel and made their submissions. It is further stated that to the knowledge of the petitioners no award had been passed and no communication under Section 12 of the Land Acquisition Act had been received by them till date. Further it was stated that the original road widening proposals contemplated that St.Mary's Road was to be widened starting from Clock Tower to Secunderabad Railway Station by a width of 120 ft. Subsequently due to certain reasons the alignment came to be changed and in the revised development plan the proposal was changed by splitting up the road into one part of 80 feet and another part of 40 feet with some constructions in between. On account of the same probably the earlier proposals for land acquisition appear to have been abandoned. It is also further stated that on 11-8-2005 the respondent again served on the 1st petitioner another notice of demolition of their property bearing No.8-3-1 and 8-3-367 of an extent of 48.88 sq. yards but no action was taken pursuant thereto. It was also further stated that on 27-8-2005 another notice dated 23-8-2005 was served on the 1st petitioner stating that 55.45 sq. matters. (66.3 sq. yards) of their property would be taken for road widening and directing the petitioners to give consent thereto. The petitioners however did not give consent for such demolition. In spite of this on 28-8-2005 the employees of the respondent demolished the above structures except 8-3-367/1 admeasuring 10'8" x 7'8" existing on the premises mentioned above highly handedly and in violation of the orders of the High Court dated 18-2-2003 in W.P.No.2915/2003 and order dated 21-4-2003 in W.P.No.6577/2003. It is further stated that the petitioners are entitled to compensation in accordance with the provisions of the Land Acquisition Act 1894 both for the extent of 66.3 sq. yards of land and also for the structures which were existing thereon. The action of the respondent in

taking away the petitioners' property without following procedure as per law and in particular under the Land Acquisition Act 1894 is illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India. It is also further stated that the petitioner visited the office of the respondent several times but the officials of the respondent are insisting the petitioners to accept nominal compensation arbitrarily fixed by them in stead of the compensation which would be payable basing on the prevailing market value. The petitioners reliably understand that the prevailing market rate is more than Rs.38,000/- per sq. yard. In spite of request of the petitioners the officials of the respondents are not disclosing any information as to the steps taken under Land Acquisition Act 1894 pursuant to the notification dated 24-9-2004 published earlier. The petitioners are totally kept in dark about the passing of any award pursuant to the said notification and for all intents and purposes those proceedings appear to have been abandoned. A legal notice dated 16-8-2005 was also sent by the petitioners just prior to the demolition by the respondent officials reminding the respondent of the orders of the Hon'ble High Court in W.P.No.2915/2003 dated 18-2-2003 but the respondent had taken no notice of the same.

4. The aforesaid said writ petition i.e., W.P.No.2915/2003 filed by the 2nd petitioner herein was disposed of observing as hereunder :

> "Following the guidelines issued by a Division Bench of this Court, this writ petition is disposed of with a direction to the respondents not to demolish the petitioner's house bearing Municipal Door No.8-3-3, 8-3-367/1 and 8-3-367/2, situate at Station Road, Second Bazar, Secunderabad, without either following due process of law or on private negotiations. However, this order will not preclude the respondent-Corporation to negotiate with the petitioner if the petitioner has consented to give the property in question. If the petitioner has not given his consent, it is open for the respondent-Corporation to acquire the same under the provisions of Land Acquisition Act. No costs."

In such circumstances, the petitioners approached this Court praying for appropriate relief specified supra.

5. A counter affidavit was filed by the respondent and a reply affidavit also was filed by the petitioners. In the counter affidavit filed by the respondent it was stated at para-3 that the respondent-Corporation had negotiated with the petitioner and sought the co-operation of the petitioners to surrender the affected portion of the land which is required to be taken over by it for the purpose of road widening in public interest. Having failed in its negotiation under Section 146 the respondent-Corporation invoked Section 147 of the Hyderabad Municipal Corporation Act, 1955 (Act II of 1956). At no time, the respondent-Corporation rejected the claim of the petitioner for compensation for the land required to be taken over for the purpose of road widening. Having not responded to the initiative taken by the respondent to its initial notice to the petitioners to come for negotiations as required under Section 146 of the Hyderabad Municipal Corporation Act, the respondent invoked the provisions of Section 147 of the said Act for compulsory acquisition for the land required for public purpose and requisitioning was sent to the Special Deputy Collector (Land Acquisition), Municipal Corporation of Hyderabad for compulsory acquisition. It was also stated that at para-4 that since private negotiations did not fructify the land acquisition proceedings had been invoked for compulsory acquisition by the Special Deputy Collector (Land Acquisition), Municipal Corporation of Hyderabad to whom the Collector, Hyderabad District delegated his powers through a notification in the local newspapers. It is further stated in para-5 of the counter affidavit that the respondent-Corporation served a notice in the month of January 2003 on the supposed to be joint property of the petitioners to an extent of 122 sq. yards. The respondent is not aware that the petitioners divided the property in between them into 57 sq. yards and 90.88 sq. yards. On the whole since the property appears to be common, a notice was issued for private negotiations and in letter No.1/RW/SMR/C-22/2003 in 2003. The respondent-Corporation having failed in private negotiations, on requisitions the Special Deputy Collector, Land Acquisition, Municipal Corporation of Hyderabad notified

the land for compulsory acquisition by issuing notification under Section 4(1) of the Land Acquisition Act vide No.D3/72676/2004 in Form 2-A on 24-9-2004 and draft declaration under Section 6 of the Land Acquisition Act and the same had been published in local newspaper and accordingly the structures were demolished. Further it is stated in para-6 that after the notification was published for compulsory acquisition in Deccan Chronicle newspaper on 30-9-2004 the award enquiry was fixed on 1-11-2004 and on the date of award enquiry Sri Rajasekhar, Advocate represented the petitioners. On the request of the petitioner the enquiry was adjourned to 19-2-2005, 19-3-2005, 23-4-2005, 25-10-2005 and 14-11-2005 but none represented on the above dates of hearing. Therefore the award enquiry had been concluded and at present the case is under preparation of award. It is denied that the petitioners had been totally kept in dark about passing the award and the allegation that these proceedings appear to have been abandoned is untenable and the same had been denied by the respondent-Corporation.

6. As stated supra, a reply affidavit is filed again reiterating the stand taken in the affidavit filed in support of the Writ Petition and it was also pleaded in the reply affidavit at paras 4, 5, 6 and 7 as hereunder :

On 24-9-2004 a notification under Section 4(1) of the Land Acquisition Act was issued which was published in Deccan Chronicle News Paper on 30-9-2004 proposing to acquire 129.20 sq. yards in premises No.8-3-1 and 8-3-367 in Block C, Ward No.7, Bholakpur village, Secunderabad Mandal belonging to the 1st petitioner and on the same day the declaration under Section 6 was published in the news paper. The notice under Section 9(3) and 10 of the Act were given to the petitioners on 6-10-2004 and no award was passed and the proceedings appear to have been abandoned. Curiously on 11-8-2005 notice of demolition was given asking the petitioner to give consent for an extent of 48.88 sq. yards. On 23-8-2005 another notice of demolition was given by the respondent mentioning 66.3 sq. yards and asking the petitioner to give consent. On 28-8-2005 the respondent demolished the structures

though it was a Sunday. The respondent in their counter affidavit failed to see that the notification for acquisition of the land dated 24-9-2004 was issued for 129.02 sq. yards in premises No.8-3-1 and 367 whereas in the notice dated 23-8-2005 issued for demolition an extent of 66.3 sq. yards was sought. It is pertinent to note that once a different extent of land is sought to be taken by the respondent from what was mentioned in the notification dated 24-9-2004, the respondent ought to have notified the lesser extent afresh by denotifying the larger extent mentioned in the notification dated 24-9-2004. The respondent cannot rely on the land acquisition proceedings issued on 24-9-2004 to justify the demolition contrary to the orders of the Hon'ble High Court. The respondent did not deposit 80% of the compensation as required under Section 17(3) of the Land Acquisition Act. The fact that the land sought to be acquired was not taken possession for a period of one year after notification was issued on 24-9-2004 i.e., till 28-8-2005 discloses that there was no urgency in acquiring the land. The delay of almost two years in passing the award and paying compensation to the petitioners vitiates the entire acquisition proceedings. The Special Deputy Collector, Land Acquisition, Municipal Corporation of Hyderabad informed the petitioners on 19-3-2005 that alignment of the road was being changed by the Municipal Corporation of Hyderabad and fresh acquisition proposals will be sent to the Government and then the compensation will be paid. The petitioners denied the statement at para-6 of the counter affidavit that on request of the petitioner the inquiry was adjourned to 19-2-2005, 19-3-2005, 23-4-2005, 25-10-2005 and 14-11-2005. The respondent fixed the date of inquiry on 25-10-2004 and subsequently it was adjourned to 19-3-2005. Thereafter no communication was given to the petitioners regarding the inquiry. The petitioners had engaged Mr.Mehmood Ali, Advocate to represent them in the award enquiry and not Mr.Rajasekhar as alleged in the counter affidavit. Therefore the respondent acted illegally in closing the award enquiry without allowing the petitioners to participate in the award enquiry. In any event, once the respondent had ordered the extent

of land from 129.02 sq. yards to 66.3 sq. yards the respondent ought to have issued a fresh notification under Section 4(1) of the Land Acquisition Act.

7. In the light of the respective pleadings of the parties, the main grievance of the petitioners appears to be the inaction on the part of the respondent-Corporation in finally settling the compensation or paying the compensation. At para-6 of the counter affidavit it is stated that after the publication was made in Deccan Chronicle News Paper, award enquiry was fixed on 1-11-2004 and on the date of the award enquiry Sri Rajasekhar, Advocate represented the petitioners and at request the enquiry was adjourned to 19-2-2005, 19-3-2005, 23-4-2005, 25-10-2005 and 14-11-2005, but none represented. Hence the award enquiry was completed and the case is under the preparation of the award. In the light of the specific stand taken and also taking into consideration the grievance ventilated by the writ petitioners that the compensation is not being finally settled or paid to the petitioners, this Court is of the considered opinion that the Writ Petition be disposed of with a direction to the respondent to finalise the preparation of the award and take further steps relating to the payment of compensation at an early date, preferably within a period of six weeks from today.

8. The Writ Petition is accordingly disposed of. No costs.

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Justice P.S. Narayana

Date : 14-9-2006

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